

(S E R V E D)
(MARCH 1, 1988)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

March 1, 1988

NO. 87-21

MARINE SURVEYORS GUILD, INC. ET AL.

v.

COOPER/T. SMITH CORPORATION

COMPLAINT DISMISSED

Complainants and respondent have filed a Joint Motion to Dismiss, stating that they have reached a resolution of their dispute and that they no longer wish to have a decision as to the merits of their contentions.

The complaint was filed on October 5, 1987. Complainants, an association of marine surveyors and two individual marine surveyors, alleged that respondent, a marine terminal operator doing business at the Port of New Orleans, had violated sections 15, 16, and 17 of the Shipping Act, 1916, by forcing complainants to enter into indemnity and insurance agreements which were exculpatory, discriminatory, unreasonable and

unlawfully disadvantageous to complainants and that respondent had favored other surveyors by not forcing them to enter into such agreements. Complainants sought a cease and desist order and reparations, claiming that one complainant had been effectively put out of business and that the others were suffering damages.

Some delay occurred in the filing of an answer to the complaint because of a problem with the mail. However, on December 21, 1987, respondent answered the complaint, generally denying the allegations and affirmatively contending, among other things, that complainants had assumed certain risks, that respondent had acted reasonably, and that the Commission lacked subject matter jurisdiction over the matter. Because of the question concerning the Commission's jurisdiction over the practices of marine terminal operators relating to marine surveyors, I had established a schedule for the filing of affidavits and a memorandum of law on this question by complainants after the filing of the answer. However, before this schedule could be implemented, I was advised that the parties were actively discussing settlement. (See Notice of Respondent's Default and Jurisdictional Question, November 5, 1987; Default Vacated; New Schedule Established, November 23, 1987.) The discussions resulted in a settlement and the present request for dismissal of the complaint without prejudice.

The gravamen of the complaint was that respondent had been attempting to require marine surveyors to agree to hold respondent harmless and to indemnify respondent for any injury or

damages even if such were caused by respondent and complainants were without fault. As part of the settlement agreement, respondent has withdrawn any demand for such broad indemnification and has substituted an agreement whereby marine surveyors wishing to enter upon the respondent's premises to perform marine surveying services, e.g., monitoring and supervising loading, handling, transferring, stowing of cargo, etc., will take out insurance covering workers' compensation and liability and naming respondent as an additional insured as a protection to respondent.¹ This type of insurance arrangement evidently satisfies the concerns of the parties, and they do not wish to continue litigation to determine either the merits of the original dispute or the question of Commission jurisdiction over the subject matter.

Now that the original demand for broad indemnification has been withdrawn and the parties have reached settlement, there is no reason to deny the request for dismissal without prejudice. The cases are numerous holding that the law and Commission policy favor settlements and presume that they are fair, correct, and valid. See, e.g., Amtrol, Inc. v. U.S. Atlantic-North Europe Conference et al., Complaint Dismissed, 23 SRR 1320 (ALJ; F.M.C. notice of finality, September 4, 1986); Docket Nos. 87-20/27, Delaware River Port Authority v. The 8900 Lines, Complaints Dismissed, February 1, 1988 (ALJ), and cases cited therein.


¹ In support of their Joint Motion to Dismiss, the parties have submitted a memorandum and a copy of the insurance agreement describing the type of insurance to be taken out by marine surveyors desiring to work on the premises of the terminal.

Settlements occurring under the overall purview of a regulatory stature are scrutinized to make sure that they do not themselves contravene any regulatory provision or policy, for example, tariff law or the law requiring that certain anticompetitive agreements be filed with the Commission before they may become effective. See Docket Nos. 87-20/27, cited above; Organic Chemicals v. Atlanttrafik Express Service, 18 SRR 1536a (1979); CGM/ICT v. Maduro, 23 SRR 1539, 1540 (ALJ 1986; F.M.C. notice of finality, January 12, 1987).

The instant settlement does not appear to contravene any regulatory provision or policy. It does not involve a question as to the proper rate or charge under a tariff as did the settlement reached in Organic Chemicals, cited above, nor is it an agreement between carriers or terminal operators or one involving more than one jurisdictional party that would require filing under section 15 of the 1916 Act or section 4 or 5 of the Shipping Act of 1984. Old Ben Coal Company v. Sea-Land Service, Inc., 21 F.M.C. 505, 512-513 (1978). Even if the Commission clearly has jurisdiction over the subject matter, i.e., the practices of a marine terminal operator with respect to persons who provide marine surveying services to the terminal or others, the requirement that persons who do business on the premises of a terminal carry liability insurance (but not that the person hold the terminal harmless for the terminal's own negligence) has been found to be reasonable by the Commission. See West Gulf Maritime Association v. The City of Galveston, 22 F.M.C. 101, 104-105 (1979). See also Southeastern Marine Terminal Co. v. GPA, 23 SRR

941, 944 (1986), affirming 23 SRR 530, 549-550. Furthermore, it is not necessary to determine the question of the Commission's jurisdiction for purposes of ruling upon the motion to dismiss. See Supreme Ocean Freight Corporation v. All Caribbean, Inc., 20 F.M.C. 428 (1978) (complaint dismissed after settlement although not clear if Commission had jurisdiction over respondent). Cf. Boston Shipping Association v. F.M.C., 706 F.2d 1231, 1235-1236 (1st Cir. 1983), affirming BSA v. NYSA, 21 SRR 955 (1982) (sometimes it is proper to rule on the merits of a complaint and dismiss it without deciding jurisdictional question).

The marine terminal operator and complainants have reached an agreement regarding protection of the terminal by means of insurance taken out by complainants and wish to have the complaint dismissed without prejudice. Under the circumstances the parties are not required to continue litigating. See Roberts Steamship Agency, Inc. v. the Board of Commissioners of New Orleans et al., 21 F.M.C. 492 (1978); Docket Nos. 87-20/27, Delaware River Port Authority v. The 8900 Lines, cited above. Accordingly, the complaint is dismissed without prejudice, as requested.


Norman D. Kline
Administrative Law Judge

(S E R V E D)
(April 5, 1988)
(FEDERAL MARITIME COMMISSION)

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DOCKET NO. 87-21

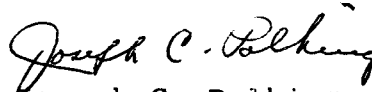
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NOTICE

Notice is given that no appeal has been taken to the March 1, 1988, dismissal of the complaint in this proceeding and the time within which the Commission could determine to review has expired. No such determination has been made and accordingly, the dismissal has become administratively final.


Joseph C. Polking
Secretary